



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2022-0172]

Hours of Service: Exemption Application from Flat Top Transport, LLC

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny Flat Top Transport's request for an exemption from the hours-of-service (HOS) regulations. Flat Top Transport requested a four-month exemption for "immediate and emergency delivery of dry and bulk food grade products to locations that supply stores and distribution centers nationally."

FMCSA analyzed the application and public comments and determined that the exemption would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Bernadette Walker, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; (202) 385-2415; or Bernadette.Walker@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number "FMCSA-2022-0172" in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, "View Related Comments."

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number, “FMCSA-2022-0172” in the keyword box, click “Search,” and chose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

To reduce the possibility of driver fatigue, FMCSA's HOS regulations in 49 CFR part 395 limit the time drivers of commercial motor vehicles (CMVs) may drive. The HOS regulations in 49 CFR 395.3(a)(1) prohibit an individual from driving again after 11 hours driving or 14 hours on duty until they have been off duty for a minimum of 10 consecutive hours, or the equivalent of at least 10 consecutive hours off duty. Under 49 CFR 395.3(a)(2) — commonly referred to as the 14-hour “driving window” — a driver has 14 consecutive hours in which to drive up to 11 hours after being off duty for 10 or more consecutive hours. Section 395.3(b)(1) prohibits drivers for a motor carrier that does not operate CMVs every day of the week from driving a CMV after being on duty for 60 hours during any 7 consecutive days, and section 395.3(b)(2) prohibits drivers for a motor carrier that operates CMVs every day of the week from driving a CMV after being on duty for 70 hours in any 8 consecutive days.

Applicant's Request

Flat Top Transport seeks a four-month exemption from the HOS regulations in 49 CFR part 395. Flat Top Transport requests the exemption to provide “immediate and emergency delivery of dry and bulk food grade products to locations that supply stores and distribution centers nationally.” Flat Top states that “the products being delivered are under strict time constraints and the number of available trucks is limited. Due to railroads being limited and a truck driver shortage, the inflation rates of parts and services, the time constraints of hours of service are causing many food producing factors to shut down until the products arrive.”

Flat Top Transport describes itself as a small trucking company with between 9 and 10 drivers which delivers products such as food grade flour, corn meal, and salts used to produce cereals, baked goods, canned goods, and meat processing. In its application,

Flat Top did not identify any alternative compliance measures that it would undertake to achieve an equivalent level of safety as complying with the existing HOS regulations.

IV. Public Comments

On September 1, 2022, FMCSA published notice of Flat Top Transport's application for exemption and requested public comment (86 FR 50426). The Agency received 11 comments. North American Millers' Association, Schell Transport, Michael Bechara, Dana Burchell, Rich Dickerson, and two anonymous commenters favored the exemption application. Schell Transport commented, "I am in favor of HOS relief to help with food supply chain issues." Two commenters, Remmel Transport, LLC and Tracy Hall, offered no position either for or against the request, submitting general comments instead. Remmel Transport commented, "There needs to be exemption for all fleets operating under 30 trucks." The Commercial Vehicle Safety Alliance (CVSA) and AWM Associates, LLC opposed the exemption. CVSA commented that "supply chain delays do not constitute an emergency situation that would necessitate temporary relief from hours-of-service regulations."

V. FMCSA Safety Analysis and Decision

FMCSA continues to monitor unique challenges motor carriers and drivers experience while transporting freight on our Nation's highways and works to ensure that safety is not compromised. Supply chain issues alone, however, do not provide a sufficient basis to exempt motor carriers transporting dry bulk food grade products from the HOS regulations. Under 49 CFR 381.310(c)(1), applicants are required to explain how they would achieve a level of safety that is equivalent to or greater than, the level of safety that would be obtained by complying with the regulations. Flat Top offered no basis on which FMCSA could conclude that granting an exemption from the HOS regulations would provide an equivalent level of safety.

For the above reasons, Flat Top Transport, LLC's exemption application is denied.

Robin Hutchinson,
Administrator.

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